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CITATIONS

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In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 1162

THE TIMES MIRROR COMPANY, APPELLANT

v.

UNITED STATES OF AMERICA

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA

MOTION TO AFFIRM

Pursuant to Rule 16, Paragraph 1(c), of the Rules of this Court, the United States moves that the judgment of the district court be affirmed.

STATEMENT

This is a direct appeal from the final judgment of the district court which adjudged that appellant Times Mirror Company ("Times Mirror"), the publisher of the Los Angeles Times, the largest daily newspaper in California (J.S., App. A, 3), violated Section 7 of the Clayton Act, 15 U.S.C. 18, by acquiring in 1964 the Sun Company of San Bernardino, California ("Sun Company"), the largest remaining

independent daily newspaper publisher in Southern California (J.S. App. A, 4). The judgment required Times Mirror to divest itself of the Sun Company.

1. THE COMPANIES INVOLVED

TIMES MIRROR

Times Mirror is a highly diversified holding company with large interests in newspaper publishing, book publishing and commercial printing. Between 1960 and 1964, its total assets increased from $81,014,000 to $165,162,000, its revenues rose from $112,560,000 to $196,537,000 and its earnings after taxes more than doubled. A large part of its growth has resulted from a number of acquisitions. At the time of acquiring the Sun Company, Times Mirror published the Los Angeles Times ("the Times"), mornings and Sundays, and, through a wholly-owned subsidiary acquired in 1962, published the Orange Coast Daily Pilot, an evening newspaper published in four editions in the beach area south of Los Angeles. (J.S. App. A, 2–3). Between 1961 and the end of 1964, Times Mirror approached six other Southern California daily newspapers with a view toward their acquisition (GX 1A).[1]

The Times, which is Times Mirror's principal enter-

[1] Hearst's Los Angeles Herald Express (1961) [GX 56]; the Santa Barbara News-Press (1961–1962) [GX 58, GX 29, p. 11, Tr. 333]; the Oxnard Press-Courier (1963) [GX 30, pp. 49, 52, Tr. 320–321]; the Pomona Progress-Bulletin (1963) [GX 30, Tr. 309–310, 312–316; GX 32, p. 96, Tr. 316–319]; the Riverside Press-Enterprise (1963 or 1964) [GX 31, Tr. 322–324]; the Bakersfield Californian (October, 1964) [GX 31, Tr. 324–326; GX 32, Tr. 326–329].

prise, dominates the morning newspaper field in Southern California, with 70 percent of total morning circulation in its ten counties (J.S., App. A, 32). Although published in Los Angeles, it has substantial circulation and is delivered to homes throughout Southern California and maintains advertising offices and reporters, full and part-time, throughout the area, including the City of San Bernardino (J.S., App. A, 3; GX 145–10, 16; GX–1B).

Between 1960 and 1964, the Times, which is the only Los Angeles morning daily newspaper, increased its circulation from 509,982 to 790,255 (daily) and from 896,653 to 1,122,143 (Sunday) (GX 145–B, 1) and almost doubled its income (GX 145–5A). Its policy has been and is to obtain the exclusive right to all syndicated features which it purchases for an area which runs from Santa Barbara on the north to San Diego on the south and east to the Colorado River (J.S., App. A, 3), and includes part of San Bernardino County (GX–1C).

The Times publishes five suburban or zone sections, each of which is distributed as part of the Times in a specific geographic area; such sections are intended to compete with local newspapers for circulation and advertising (J.S., App. A, 3). In 1964 one of these sections was circulated on Sundays in the western part of San Bernardino County (GX 145–15), and in both 1962 and 1964 the Times' suburban advertising manager recommended that its circulation be extended to additional parts of the county (GX 131–132).

Within San Bernardino County in 1964, the Times had a weekday daily circulation of 16,650 and Sunday

circulation of 31,993. This was 10.6 percent of total weekday circulation for both morning and evening newspapers, 23.9 percent of total morning circulation and 20.3 percent of total Sunday circulation in the county (J.S., App. A, 25). The Times is circulated and home-delivered in substantial volume in all major communities throughout San Bernardino County (J.S., App. A, 5, GX 14A&B, 15A&B, 16A&B, attached hereto as appendixes), and in 1964 had the second largest morning newspaper circulation in the county (after the Sun Company's morning Sun), and the second largest Sunday circulation (after the Sun-Telegram) (GX–2B&C).

SUN COMPANY

Sun Company, then the largest independent newspaper publishing company in Southern California, was in sound financial condition at the time of its acquisition, with total assets of $4,551,261 and with net income from newspaper operations in 1964 which exceeded $1,000,000. It operated three newspapers, the morning Sun, the evening Telegram and the Sunday Sun-Telegram, and the Acme Colorprint Company. In each year from 1960 to 1964, its revenues from such operations approximated $8,000,000. (J.S., App. A, 4–5).

The combined weekday circulation of the Sun and the Telegram was nearly three times as large as that of the next largest daily published in the county and more than eight times as large as any other daily published there (J.S., App. A, 5). The Sun was the only morning newspaper published daily in San Bernar-

dino County, with 75.6 percent of total morning circulation there, and the Sun-Telegram was the largest Sunday newspaper published in the county with 44.0 percent of all Sunday circulation (J.S., App. A, 5; GX 2B, 2C). The Sun was in 1964 the third largest morning daily in Southern California and the Sun-Telegram the sixth largest Sunday newspaper in that area (GX 4B&C).

Except for the Times and the evening and Sunday Los Angeles Herald-Examiner, the Sun and Sun-Telegram were the only newspapers home delivered throughout San Bernardino County. The Sun covered the county with nine zone editions distributed to specific areas (GX 145–25). In addition to local news, both the Sun and the Sun-Telegram carried a substantial amount of state, national and international news, complete stock reports of the New York and American Stock Exchanges, national sports news, nationally known columnists, comics and other syndicated features, and Los Angeles radio and television logs (J.S., App. A, 5).

San Bernardino County[2] encompassed virtually

[2] San Bernardino County is the largest county in the United States. Its western edge is approximately 35 miles east of Los Angeles, and its eastern boundary is the Colorado River—some 200 miles away. The county's population was more than 600,000 in 1965, and is expected to approximate one million by 1980 (GX 17). At present, most of the population is clustered at the western end of the county. George Air Force Base, 30 miles north of San Bernardino, is surrounded by small communities such as Victorville, and Barstow is a rail center in the mid-section of the county. East of the City of San Bernardino there is a vast expanse of mountain and desert, throughout which numerous resort and desert communities are located.

the entire area of circulation and home delivery overlap between the Times and Sun Company's newspapers (J.S., App. A, 25; see GX 14A&B, 15A&B, and 16A&B, attached hereto as Appendices).

2. THE DECISION OF THE DISTRICT COURT

After a seven-week trial during which newspapermen, advertisers, economists and journalism experts testified, and extensive industry data and company documents were received in evidence, the district court held that the acquisition had the effect of substantially lessening competition in the daily newspaper business in San Bernardino County (J.S., App. A, 34). In concluding that the effects of the acquisition can properly be measured in the daily newspaper business in that county, the court laid heavy emphasis upon the fact that the defendant itself, in evaluating the acquisition, had used that line of commerce in that geographic area as the relevant market (J.S., App. A, 26; see GX 99, 6–10; GX 100, Schedules D and E).

In further rejecting the argument advanced here by appellant that "there can be no appropriate product market which includes both the Times and the Sun" (J.S., App. A, 15–20), the court held that the "daily newspaper business is a distinct line of commerce and is a product separate and distinct from any other product," basing its conclusion upon "practical indicia" such as industry and public recognition, unique methods of production, distribution and pricing, and the unique cluster of services in a single package provided by daily newspapers (J.S., App. A, 20–21). The

court, using similar criteria, further found that morning, evening and Sunday newspapers were sufficiently distinctive to constitute submarkets within the daily newspaper market (J.S., App. A, 21–22).

The court found that this acquisition constituted a prima facie violation of Section 7 because it resulted in the combined papers having 54.8 percent of total weekday, 99.5 percent of total morning and 64.3 percent of total Sunday circulation (J.S., App. A, 23). In addition, the court found that the Times and Sun had competed prior to the acquisition for national advertising and that such competition had been lessened following the acquisition (J.S., App. A, 24).

The court found that this acquisition occurred in an area, Southern California, where "there was already a heavy concentration of daily newspaper ownership" and where "[t]here has been a steady decline of independent ownership of newspapers." It noted that in Southern California four publishers accounted for 71 percent of all weekday daily newspaper circulation, three accounted for over 85 percent of all morning circulation and two accounted for about 66 percent of all Sunday circulation; and that the number of independent dailies had declined from 39 to 20 between January 1, 1952, and December 31, 1966. A similar trend was noted in San Bernardino County where six of the seven dailies published were independently owned in 1952, while only three of eight remained independent at the end of 1966 (J.S., App. A, 30–31).

The court held that the acquisition was "particularly anticompetitive because it eliminated one of the

few independent papers which had been able to operate successfully in the morning and Sunday fields," despite the strength of the Times' circulation throughout Southern California (J.S., App. A, 31–32), and that the acquisition had raised "a barrier to entry of newspapers in the San Bernardino County market that is almost impossible to overcome" (J.S., App. A, 33).

ARGUMENT

The district court held that the acquisition by the second largest morning and Sunday newspapers in San Bernardino County of the largest morning and Sunday newspapers there (GX 2B&C, 14A&B, 15 A&B, 16A&B) violated Section 7 of the Clayton Act because its effect was substantially to lessen competition in the daily newspaper business in San Bernardino County. This conclusion rested upon the following subsidiary findings:

1. Both the Times and the Sun had a substantial number of buyers in San Bernardino County;

2. Both the Times and the Sun were offered for sale at the same time of the day throughout San Bernardino County;

3. While not identical, the Times and the Sun both offered substantial amounts of similar news stories, features and advertising;

4. Both the Times and the Sun were daily newspapers—a product which is separate and distinct from any other product;

5. Morning papers constitute a submarket within the daily newspaper field, and morning papers tend to

compete more vigorously for circulation with each other than they do with evening newspapers;

6. Sunday newspapers constitute a submarket within the daily newspaper field;

7. The Times and Sun competed for advertising prior to the acquisition;

8. The acquisition gave Times Mirror 99.5 percent of total morning circulation, 54.8 percent of total weekday circulation and 64.3 percent of total Sunday circulation in the geographic market (San Bernardino County) which Times Mirror itself used as the relevant market to evaluate the effects of this acquisition.

Appellant challenges the court's findings that the daily newspaper business was a relevant product market and that San Bernardino County was a relevant geographic market within which to evaluate the effects of the acquisition. The criteria for delineating the relevant product and geographic markets under Section 7 have been thoroughly defined by this Court in previous Section 7 cases. See, *e.g.*, *United States* v. *Pabst Brewing Co.*, 384 U.S. 546; *United States* v. *Continental Can Co.*, 378 U.S. 441; *Brown Shoe Co.* v. *United States*, 370 U.S. 294. There is no issue concerning the application of those criteria to the facts of this case that warrants plenary argument.

1. THE COURT CORRECTLY DETERMINED THAT THE DAILY NEWSPAPER BUSINESS IN SAN BERNARDINO COUNTY WAS A "RELEVANT MARKET" IN WHICH TO MEASURE THE EFFECTS OF THE ACQUISITION

THE PRODUCT MARKET

The record amply supports the district court's finding (made after examination of comparable copies of the two newspapers (GX 90A–F, 92, 106A–G; Tr. 524–531)) that daily newspapers constitute an appropriate product market and that both the Times and the Sun are a part of that market. There is no confusion on this point among newspaper readers, advertisers, economists or publishers; all recognize that the daily newspaper is a unique product for which there is no substitute. (Pinkley, Tr. 966–972; Hays, Tr. 789–791; Peterson, Tr. 3049–3050; Markham, Tr. 3783–3784, 3787–3794; GX 175.) As the court stated (J.S., App. A., 22), "the daily newspaper business is a commercial reality which is universally recognized as a line of commerce." See, also, *Crown Zellerbach Corp.* v. *Federal Trade Commission,* 296 F. 2d 800, 813 (C.A. 9), certiorari denied, 370 U.S. 937: "[A]s a practical matter no one in the industry or interested in it or having anything to do with it has any difficulty in distinguishing [it] * * *."

Appellant's principal contention is that, although the Times and the Sun were admittedly daily newspapers which were offered for sale side by side on news-stands, and home delivered throughout San Bernardino County, they were not in the same product

market because each carried a substantial amount of material which the other did not. It argues that there was an insufficient showing of "interchangeability of use and cross-elasticity of demand" between the papers to justify treating them as competing products.[8]

[8] This contention, explored at length at the trial, was based in large part upon the inability of appellant's expert economic witness, Dr. Phillips, to find evidence of cross-elasticity after an analysis of the price-sensitivity of the two newspapers in the "San Bernardino city zone" (Tr. 1444). Dr. Phillips testified that his analysis was based upon DX 808, and admitted that errors in that exhibit would result in his drawing erroneous conclusions (Tr. 1580). He further admitted that DX 808 failed to take account of such important factors as the marketing and promotional activities of the publishers (Tr. 1592–1593), the increases in the Sun's national, international and financial news coverage (Tr. 1611), the newsprint shortage which ended in 1946 (Tr. 1594), and the price changes, circulations and demise of the Los Angeles Examiner and the Mirror-News which had been distributed in San Bernardino prior to 1962 (Tr. 1612–1613). Even more important, Dr. Phillips admitted he had been unaware that the geographic area selected for circulation comparison in DX 808 was not the same for the Times and Sun and that it varied for each paper during the period studied (Tr. 1585–1589, 1732–1734). Thus the study contained inconsistencies causing it to reflect circulation changes unrelated to any price activity, and these defects undermined Dr. Phillips' conclusions concerning the effects of price changes on circulation. Subsequently (in DX 808A) Dr. Phillips corrected the Times' figures but still failed to conform the Sun's circulation measurement area to the Times', and in all other respects left DX 808A with the same shortcomings as DX 808.

Furthermore, despite the fact that circulation variations of as little as 8 percent were deemed sufficient by Dr. Phillips for drawing his initial conclusions (Tr. 1763–1766), he insisted that changes of the magnitude of 20 percent between the circulation figures used in DX 808 and those used in DX 808A made no difference in his conclusions (Tr. 1763).

Finally, while Dr. Phillips attempted to relate price increases to circulation changes for the Sun and Times (cross-elasticity

Appellant's position ignores the realities of competition in the newspaper business. A newspaper is not a homogeneous product, but a package of hundreds of different items of information, opinion and entertainment designed to appeal to the preferences of a maximum number of readers within its circulation area. A newspaper competes for circulation, not primarily by seeking to undersell its rivals, but by developing a blend of news, features and services which will have a broad appeal to readers of widely varying tastes. Competition based on quality and composition of product, no less than price competition, is protected by the antitrust laws. See *United States* v. *Continental Can Co., supra,* at 455–456. Because the price of a newspaper is nominal, and because it constitutes only one competitive element, it is neither surprising nor significant to find that demand may not be immediately responsive to relatively insubstantial price changes. The daily newspaper business is clearly one in which over-reliance on cross-elasticity of demand in response to mere price changes will obscure, rather than identify competition. See *United States.* v. *Continental Can Co., supra,* at 453; *Brown Shoe Co.* v. *United States, supra,* at 326.

Appellant itself has recognized these realities of competition in the daily newspaper business by insisting on exclusive use of its syndicated features in the areas of its principal circulation (J.S. App. A,

of demand), he admitted that, although testifying as an expert, he had never studied the crucial question—how large a price change is necessary before subscribers will switch from one newspaper to another (Tr. 1603–1604).

3). San Bernardino readers who choose the Times because of particular features available therein might well rely upon the Sun or other county newspapers to the exclusion of the Times if they also carried such features.[4]

The record fully supports the district court's inclusion of the Times and the Sun in a single product market. One of appellant's own experts admitted that for "most people living in the City of San Bernardino the Sun would be a complete newspaper," which he had previously defined as being a newspaper which "make[s] it unnecessary to read another metropolitan paper * * * [i]n order to be informed" (Tr. 4259–4260, 4256). Otis Chandler, publisher of the Times, conceded that "in the very broadest sense of competition," the Times competed daily and Sunday with the Sun newspapers in many substantial communities throughout the county (Tr. 562). Independent newspapermen testified that their dailies compete for circulation with the Times and all other dailies which entered their circulation area (Tr. 754–757, 762–763, 975–977, 3941–3945, 3962). The publisher of the *Riverside Press-Enterprise*, whose papers and market are markedly similar to that of the Sun newspapers, stated that the Times was his most important competitor for circulation (Tr. 754), and

[4] The Editor of the Sun, G. David Ackley, testified that there are people who will buy a daily newspaper simply to check the racing results or the stock market quotations (Tr. 697). Since both the Sun and the Times carried these and many other similar items, it is clear that for many readers they were in fact effective substitutes for each other despite variations in total content.

that his morning paper competed with the Times for circulation throughout Riverside County—the area where their circulations overlap (Tr. 757). Finally, a Southern California newspaper publisher, who was the former editor and publisher of the Los Angeles Mirror-News and a former Sun employee, stated that the Times and the Sun competed at the time of the acquisition (Tr. 1001–1003).

In delineating the relevant market, the district court did not apply a different standard from that applied in *United States* v. *Citizen Publishing Co.* (Civ. No. 1969—Tucson, D. Ariz., January 31, 1968). In that case, out-of-town newspapers circulating in Pima County, Arizona (including the Los Angeles Times), were excluded from the relevant market in measuring the market power of the two merging Tucson newspapers because they did not carry sufficient news of local interest to Tucson readers to make them substitutes for the local newspapers. But there the lack of effective competition by out-of-town dailies was shown by the fact that the two Tucson papers had a combined circulation of 73,799, while the combined circulation of *all* out-of-town papers was only 3,379—approximately 4.4 percent of the total circulation (J.S. App. B, 9—Finding 112). The circulation of the Times in San Bernardino County was far greater: more than 16,000 daily and 31,000 Sunday, constituting 10.6 percent of the weekday daily, 23.9 percent of the morning, and 20.3 percent of the Sunday market.[5] As already

[5] Market shares were computed here against a total which included in the San Bernardino County market the circulation of out-of-town papers such as the New York Times and the

pointed out, although the contents of the Times and the Sun are different, such differences are ones of degree. The Times, a Southern California newspaper, carries much more news of interest to readers in adjacent San Bernardino County, California, than it does for readers in Pima County, Arizona, and was therefore, as the record shows, a substantial competitor in the former, but a miniscule competitive factor in the latter market.

B. THE GEOGRAPHIC MARKET

The effects of an acquisition may appropriately be tested in any economically significant area of the United States. See *United States* v. *Pabst Brewing Co., supra.* San Bernardino County is not only a large and economically significant area, but encompassed virtually the entire area of circulation overlap between the Times and the Sun prior to the acquisition (See GX 14A&B; 15A&B; 16A&B; attached as appendices.)

Appellant's attack on the district court's choice of San Bernardino County as an appropriate geographic market rests on the contention that this county is merely a political boundary and does not conform to economic reality (J.S., 37). The court's opinion refutes this contention; the court recognized that political and administrative boundaries are not necessarily market boundaries for antitrust pur-

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Washington Post, which do not attempt to provide news of purely local interest for Southern California readers. But appellant can hardly complain that this was error, since its effect would be *de minimis* and to the benefit of appellant in the computation of market shares.

poses, and it carefully weighed the commercial realities of the situation. Among other things, the court emphasized that numerous newspaper and advertiser reference sources, including Audit Bureau of Circulations, American Newspaper Markets, Inc., and Standard Rate and Data Service, as well as Times Mirror and Sun Company promotional brochures prepared for advertisers, all recognized San Bernardino County as a newspaper market; and it noted that Times Mirror itself, in evaluating the acquisition, used the daily newspaper business in San Bernardino County as the relevant market (J.S., App. A, 25–26).

The court thus applied precisely the type of "practical indicia" identified as significant by this Court in *Brown Shoe Co.* v. *United States, supra* at 325. Both *Brown Shoe, supra,* at 337, n. 65, and the district court (J.S., App. A, 26–27) also fully answered appellant's other argument that the County cannot be the relevant geographic market because of the small share of the Times' total circulation which is found there.

2. THE ACQUISITION HAD THE EFFECT OF SUBSTANTIALLY LESSENING COMPETITION IN THE DAILY NEWSPAPER BUSINESS IN SAN BERNARDINO COUNTY

A. COMPETITION FOR CIRCULATION

That the acquisition of the dominant newspaper publisher in San Bernardino County by the second largest seller of newspapers in that county, resulting in a market share for the acquirer of 54.8 percent of total weekday circulation, 99.5 percent of total morning circulation, and 64.3 percent of total Sunday cir-

culation, violates Section 7 is settled by the decisions of this Court condemning mergers of competitors. Appellant's assertion (J.S. 10) that this is not such a merger, and that the court below rejected the government's claim that the acquisition involved competing newspapers, is contradicted by the court's use of product and geographic markets encompassing sales of both papers and its use of combined market shares to test the effect of the acquisition, and the persuasive evidence discussed *supra* that the Times and the Sun competed for circulation prior to the acquisition.

Moreover, "the competition with which § 7 deals includes not only existing competition but that which is sufficiently probable and imminent." *United States* v. *Continental Can Co., supra,* at 458. The Times, with its ability to distribute newspapers throughout the county, and strong reader acceptance as demonstrated by its volume of sales, was the only newspaper in a position to challenge the dominant position of the Sun in San Bernardino County. To the extent that its ability to penetrate the market was limited by the Sun's advantage in coverage of purely local news, the Times had the potential, by expansion of a zone edition, to compete more effectively in this area. That the Times so recognized is demonstrated by its active consideration prior to the acquisition of extension of one of its zone sections further into the county (GX 131, Phase II, p. 1; GX 132, Alternative #2). Conversely, the Sun was obliged to maintain its advantage in local coverage and to seek to improve its product in terms of news and features in which the Times excelled in order to prevent further inroads

into its circulation. Since the acquisition, the Times has assumed and exercised active control of the management of the Sun (J.S., App. A, 33–34); under common control there is no longer any incentive for either paper to improve its product for the purpose of attracting readership away from the other or preventing its readers from being diverted to the other.

B. COMPETITION FOR ADVERTISING

"[E]very newspaper is a dual trader in separate though interdependent markets; it sells the paper's news and advertising content to its readers; in effect that readership is in turn sold to the buyers of advertising space." *Times-Picayune Pub. Co.* v. *United States,* 345 U.S. 594, 610.

Daily newspapers which circulate in substantial numbers in any area are generally competitors for advertising in that area. Since the Times was and is the second largest morning and the second largest Sunday paper (in terms of circulation) available in San Bernardino County, it is an important factor in that market, and an available advertising medium for the large group of advertisers (such as national advertisers and Southern California retail chain stores) who distribute their products in both the Los Angeles and the San Bernardino areas.

The record supports the court's findings that advertising is the lifeblood of a daily newspaper, accounting for the largest share of its revenues; and that the Times competed with the Sun for advertising (J.S., App. A, 24). The recognition by both the Sun and the Times that they competed for national adver-

tising was shown by testimony (Tr. 621, 664–665) and by promotional advertising (Sun, GX 95, Tr. 1140–1141; Times, GX 108A, 6, 7), including the Sun's long-standing advertising campaign in major trade journals which sought to persuade national advertisers not to rely on the Los Angeles dailies for coverage of the San Bernardino market (GX 116A–M, 117A–G, 118A, 119A–D). The abandonment of this campaign after the acquisition, which the court found to have been "as [a] result of suggestions from executives of the Times" (J.S., App. A, 34), dramatically demonstrates the lessening of competition for national advertising caused by the acquisition. (Compare GX 116M with GX 116N&S, Tr. 616–620).[6]

C. BARRIERS TO ENTRY

The court's finding that this acquisition raised a barrier to entry in the San Bernardino County newspaper market almost impossible to overcome is amply supported by the record. One Southern California publisher testified that the Sun had been markedly strengthened by its affiliation with the Times and that if he "were looking for a market in which to start a newspaper, I can assure you it would not be San Bernardino County" (Pinckley, Tr. 1003–1004). Another publisher who had left the daily market in San Bernardino County following the acquisition

[6] National advertising, which in 1963 accounted for more than $500,000 of Sun Company's newspaper revenues (GX 147–7, Tr. 522), is the most lucrative form of newspaper advertising because it commands higher rates and entails lower production and sales cost than does local advertising (Tr. 604–605, 815–816, 828–829, 991–992).

said he would be much more reluctant to start a daily paper in Rialto (in San Bernardino County) now than when he first did so, several years before (Jones, Tr. 950, 954). An acquisition which substitutes a far more powerful firm for a smaller but already dominant firm, with the result that barriers to entry are enhanced and smaller firms are dissuaded from aggressively competing, has dangerous anticompetitive effects. *Federal Trade Commission* v. *Procter & Gamble Co.*, 386 U.S. 568, 578.[7]

CONCLUSION

For the reasons stated, the judgment of the district court should be affirmed.

Respectfully submitted.

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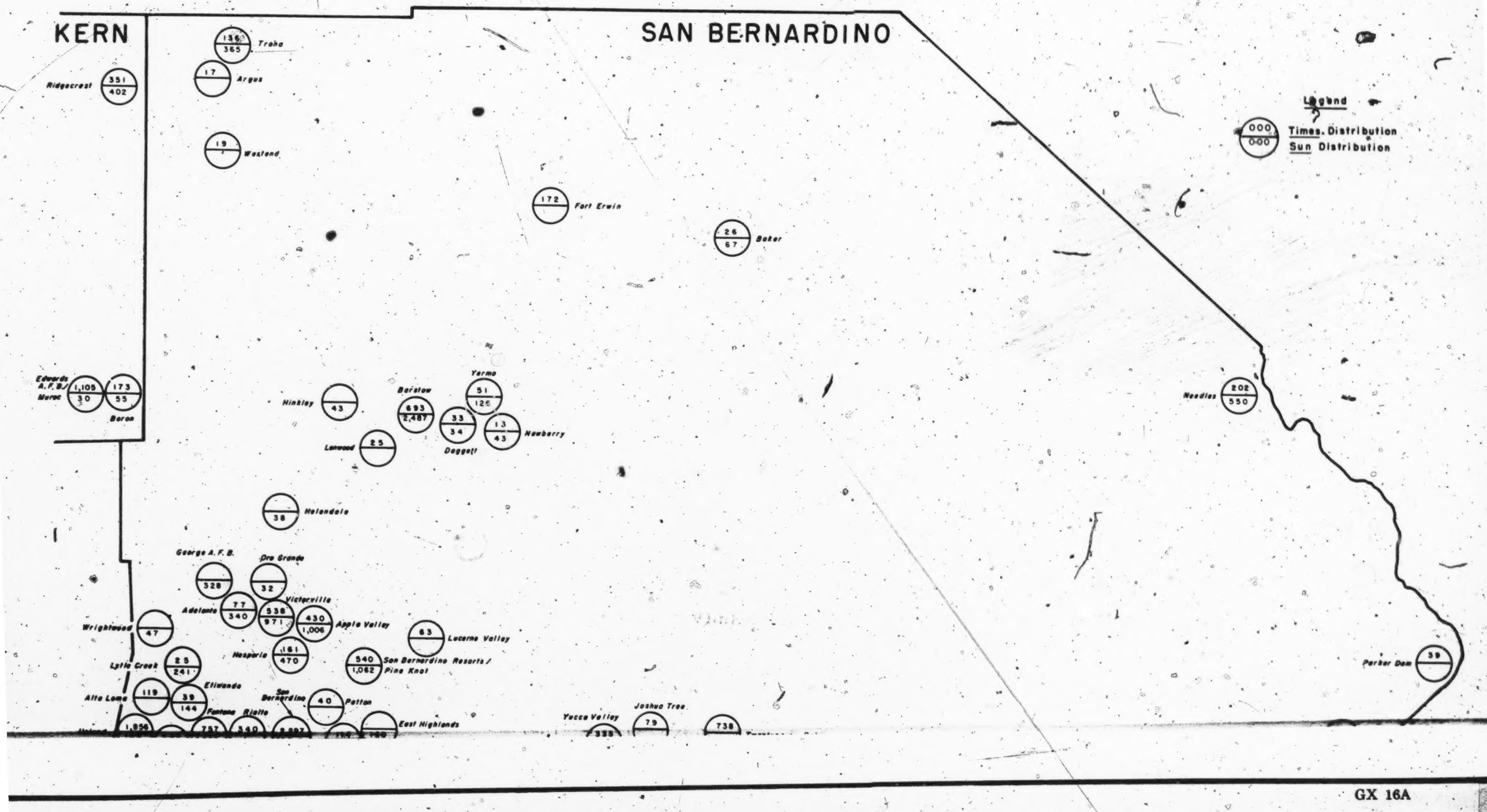
APRIL 1968.

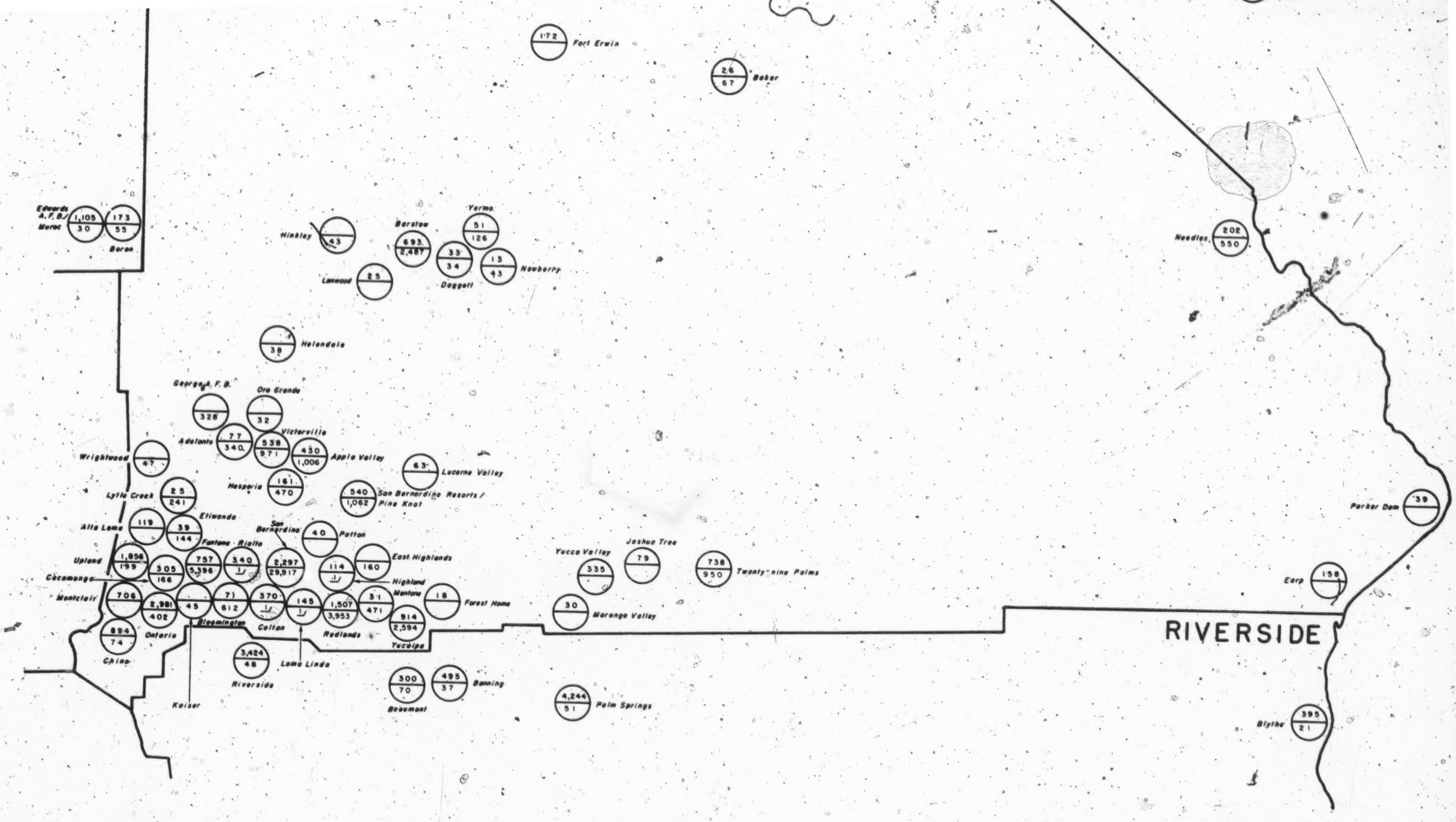
[7] The fact that a small weekly paper in the outlying desert community of Victorville commenced daily publication after the acquisition, an event of which the court below was fully cognizant (J.S., App. A, 36), in no way establishes that its conclusion with respect to barriers to entry was erroneous. The applicability of § 7 does not depend on a showing that the challenged acquisition has made barriers to entry insuperable; it is enough that barriers to entry have been substantially enhanced. See *Federal Trade Commission* v. *Procter & Gamble Co.*, 386 U.S. at 579. In any event, the Victorville Daily Press is an evening paper; its transition to daily publication is wholly irrelevant to the question of barriers to entry in the morning submarket (Tr. 3959).

CIRCULATION OVERLAP OF THE MORNING LOS ANGELES TIMES AND THE MORNING SAN BERNARDINO SUN 1964

GX 14A



GX 16A


Fort Erwin
172
Baker
26
67
Edwards A.F.B./ Muroc
1,105
30
173
55
Boron
Hinkley
43
Lenwood
25
Barstow
693
2,487
Yermo
51
126
33
34
Daggett
13
43
Newberry
Helendale
39
George A.F.B.
328
Oro Grande
32
Victorville
77
340
538
971
Adelanto
430
1,006
Apple Valley
Wrightwood
47
Lytle Creek
25
241
Hesperia
161
470
63
Lucerne Valley
540
1,062
San Bernardino Resorts / Pine Knot
Alta Loma
119
Etiwanda
39
144
San Bernardino
40
Patton
Fontana
Rialto
Upland
1,856
199
757
5,396
340
2,297
29,917
East Highlands
114
160
Highland
Cucamonga
305
166
Montclair
706
2,981
402
Ontario
45
71
612
Bloomington
370
Colton
145
1,507
3,953
Redlands
31
471
Mentone
18
Forest Home
914
2,594
Yucaipa
894
74
Chino
3,424
48
Riverside
Lomo Linda
Kaiser
300
70
Beaumont
495
37
Banning
Yucca Valley
335
Joshua Tree
79
738
950
Twenty-nine Palms
30
Morongo Valley
4,244
51
Palm Springs
Needles
202
550
Parker Dam
39
Earp
158
RIVERSIDE
Blythe
395
21

SOURCE: 14B

Circulation overlap of the morning Los Angeles Times and the morning San Bernardino Sun—1964

Community	Morning	
	Times	Sun
SAN BERNARDINO COUNTY		
Adelanto	77	340
Alta Loma	119	—
Apple Valley	430	1,006
Argus	17	—
Baker	26	67
Barstow	693	2,487
Bloomington	71	612
Chino	894	74
Cucamonga	305	166
Daggett	33	34
Earp	158	—
East Highlands	—	160
Etiwanda	39	144
Fontana	757	5,396
Forest Home	18	—
Fort Irwin	172	—
George A.F.B	—	328
Helendale	—	38
Hesperia	161	470
Hinkley	—	43
Joshua Tree	79	—
Kaiser	—	45
Lenwood	25	—
Lucerne Valley	63	—
Lytle Creek	25	241
Mentone	31	471
Montclair	706	—
Morongo Valley	30	—
Needles	202	550
Newberry	13	43
Ontario	2,981	402
Oro Grande	—	32
Parker Dam	39	—
Pine Knot [1]	540	1,062
Redlands	1,507	3,953
San Bernardino City Zone	[2]	[3] 29,917
San Bernardino	2,297	[4]
Colton	370	[4]
Highland	114	[4]
Loma Linda	145	[4]
Patton	40	[4]
Rialto	340	[4]
Trona	136	365
Twenty-nine Palms	738	950
Upland	1,856	199
Victorville	538	971
Westend	19	—
Wrightwood	—	47
Yermo	51	126
Yucaipa	914	2,594
Yucca Valley	335	—
Balance of County	81	230
Total San Bernardino County	[3] 16,650	[3] 52,636
RIVERSIDE COUNTY		
Banning	495	87
Beaumont	300	70
Blythe [5]	395	21
Palm Springs	4,244	51
Riverside	8,424	48
KERN COUNTY		
Boron	173	55
Muroc [6]	1,105	30
Ridgecrest	351	402

[1] Reported by *Sun* as "Pine Knot" and by the *Times* as "San Bernardino Mountain Resorts."

[2] No San Bernardino City Zone figure reported by *Times*. See following 6 communities for comparable area.

[3] Adjusted ABC Audit Report figure.

[4] Included in San Bernardino City Zone.

[5] Whereas the source used (Sun ABC Audit Report) does not usually report individual community circulations of less than 25, in this instance it did, and the figure reported is shown here.

[6] Reported by *Sun* as "Muroc" and by the *Times* as "Edwards A.F.B."

NOTE.—*Sun* ABC circulation for all communities reported. *Times* ABC circulation for all San Bernardino County communities reported, and for neighboring out-of-county communities where *Sun* circulation is reported.

Source:

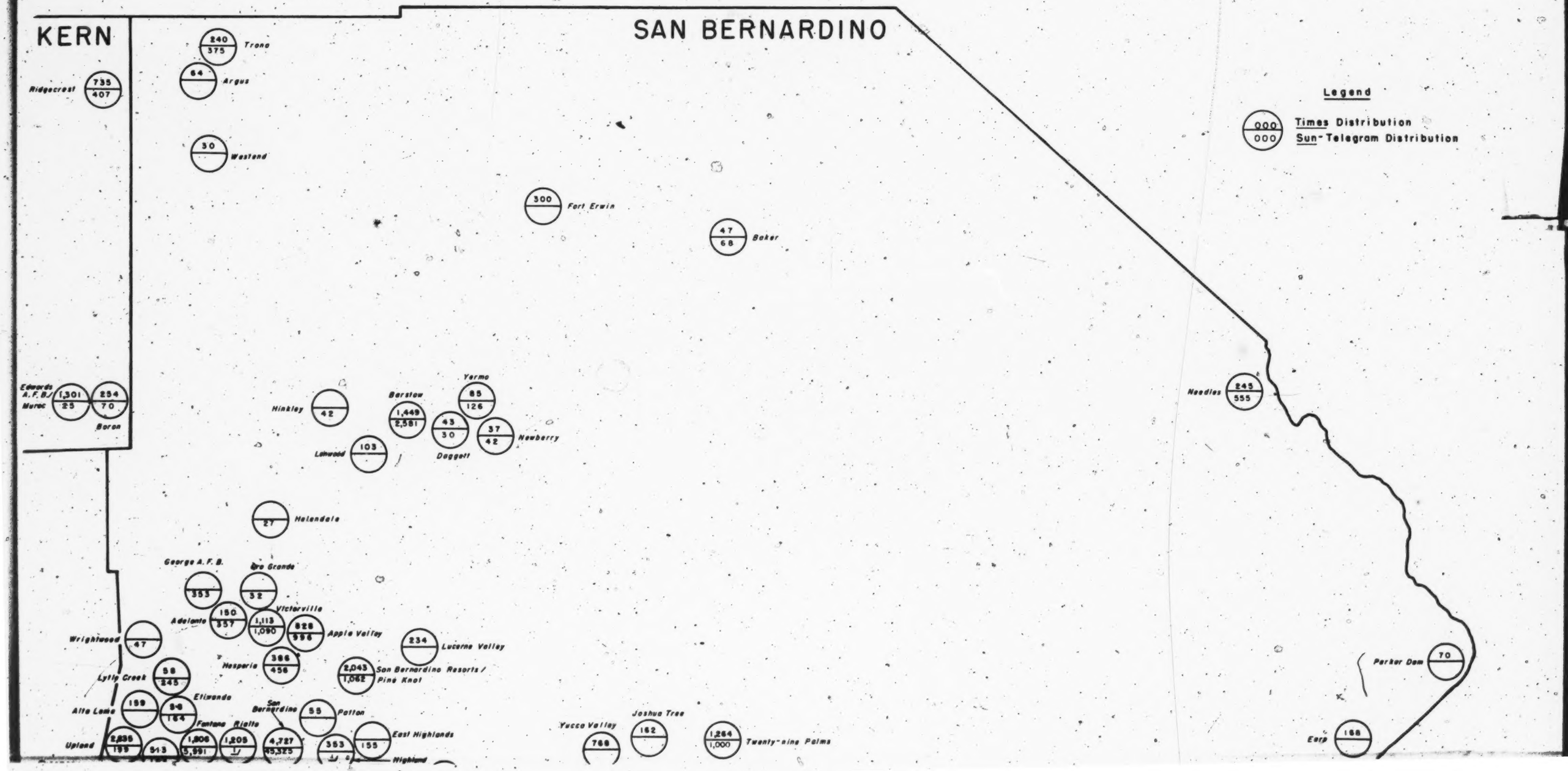
Times—ABC Audit Report (12 months ending Mar. 31 1964).

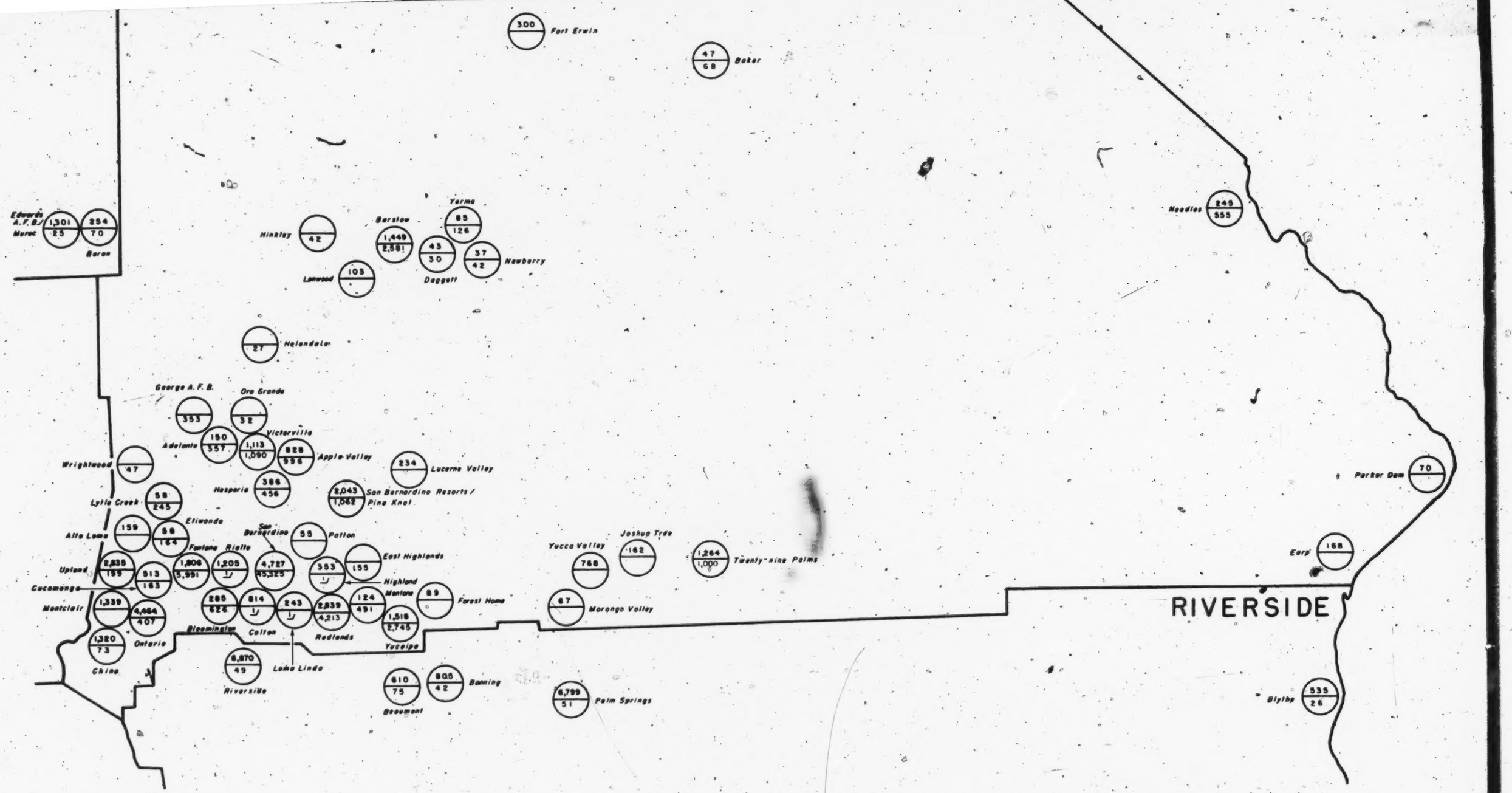
Sun—ABC Audit Report (12 months ending Sept. 30 1964).

GX 15A

CIRCULATION OVERLAP OF THE SUNDAY LOS ANGELES TIMES AND THE SUNDAY SAN BERNARDINO SUN-TELEGRAM

1964




300
Fort Erwin
47
68
Baker
Needles
245
555
Parker Dam
70
Edwards A.F.B./ Muroc
1,301
25
254
70
Boron
Hinkley
42
Barstow
1,449
2,581
Yermo
85
126
43
30
Daggett
37
42
Newberry
Lenwood
103
27
Helendale
George A.F.B.
353
Oro Grande
32
150
357
Victorville
Adelanto
1,113
1,090
828
996
Apple Valley
234
Lucerne Valley
Wrightwood
47
Hesperia
386
456
2,043
1,062
San Bernardino Resorts / Pine Knot
Lytle Creek
58
245
Etiwanda
159
Alta Loma
58
164
San Bernardino
55
Patton
Fontana
Rialto
1,808
5,991
1,205
4,727
45,325
353
155
East Highlands
Highland
Upland
2,835
189
513
183
Cucamonga
Montclair
1,339
4,464
407
285
626
814
243
2,839
4,213
124
491
Mentone
89
Forest Home
1,518
2,745
Yucaipa
Redlands
Colton
Bloomington
Ontario
1,320
73
Chino
6,870
49
Riverside
Loma Linda
610
75
Beaumont
805
42
Banning
Yucca Valley
768
Joshua Tree
162
1,264
1,000
Twenty-nine Palms
67
Morongo Valley
6,799
51
Palm Springs
Earp
188
Blythe
535
26
RIVERSIDE

SOURCE: 15B

Circulation overlap of the Sunday Los Angeles Times and the Sunday San Bernardino Sun-Telegram—1964

Community	Sunday	
	Times	Sun-Telegram
SAN BERNARDINO COUNTY		
Adelanto	150	367
Alta Loma	159	—
Apple Valley	828	996
Argus	64	—
Baker	47	68
Barstow	1,449	2,581
Bloomington	285	626
Chino	1,320	73
Cucamonga	513	163
Daggett	43	30
Earp	168	—
East Highlands	—	155
Etiwanda	58	164
Fontana	1,806	5,991
Forest Home	89	—
Fort Irwin	300	—
George A.F.B.	—	358
Helendale	—	27
Hesperia	386	456
Hinkley	—	42
Joshua Tree	162	—
Lenwood	103	—
Lucerne Valley	234	—
Lytle Creek	58	245
Mentone	124	491
Montclair	1,230	—
Morongo Valley	67	—
Needles	245	555
Newberry	37	42
Ontario	4,464	407
Oro Grande	—	32
Parker Dam	70	—
Pine Knot [1]	2,043	1,082
Redlands	2,839	4,213
San Bernardino City Zone	(2)	[3] 45,225
San Bernardino	4,727	(4)
Colton	814	(4)
Highland	353	(4)
Loma Linda	243	(4)
Patton	55	(4)
Rialto	1,205	(4)
Trona	240	375
Twenty-nine Palms	1,264	1,000
Upland	2,835	199
Victorville	1,113	1,090
Westend	30	—
Wrightwood	—	47
Yermo	85	126
Yucaipa	1,518	2,745
Yucca Valley	768	—
Balance of County	119	243
*Total San Bernardino County	[3] 31,993	[3] 69,389
RIVERSIDE COUNTY		
Banning	805	42
Beaumont	610	75
Blythe	535	26
Palm Springs	6,799	51
Riverside	6,870	49
KERN COUNTY		
Boron	254	70
Muroc [5]	1,301	25
Ridgecrest	735	407

[1] Reported by *Sun-Telegram* as "Pine Knot" and by the *Times* as "San Bernardino Mountain Resorts."

[2] No San Bernardino City Zone figure reported by the *Times*. See following 6 communities for comparable area.

[3] Adjusted ABC Audit Report figure.

[4] Included in San Bernardino City Zone.

[5] Reported by *Sun-Telegram* as "Muroc" and by the *Times* as "Edwards A.F.B."

NOTE.—*Sun-Telegram* ABC circulation for all communities reported. *Times* ABC circulation for all San Bernardino County communities reported, and for neighboring out-of-county communities where *Sun-Telegram* circulation is reported.

Source:

Times—ABC Audit Report (12 months ending Mar. 31 1964).

Sun—ABC Audit Report (12 months ending Sept. 30, 1964).

1964

KERN

SAN BERNARDINO

RIVERSIDE

KEY

Home Delivered by:

- ● Both Times and Sun
- (T) Times only
- (S) Sun only

China Lake
Ridgecrest
Boron
Trona
Argus
Westend
Fort Irwin
Baker
Barstow
Yermo
Daggett
Lenwood
Needles
Parker Dam
Earp
Yucca Valley
Joshua Tree
Twenty-nine Palms M. B.
Twenty-nine Palms
Lucerne Valley
Big Bear
Big Bear City
Lake Arrowhead
Crestline
Hesperia
Apple Valley
Victorville
Adelanto
Oro Grande
George A. F. B.
Devore
Lytle Creek
Alta Loma
Etiwanda
Cucamonga
Upland
Fontana
Rialto
Muscoy
San Bernardino
Colton
Del Rose
Patton
Highland
E. Highlands
Norton A. F. B.
Mentone
Redlands
Yucaipa
Calimesa
Montclair
Bloomington
Ontario
Chino
Loma Linda
Bryn Mawr
Crestmore
Forest Home
Oak Glenn

Baker

Needles

Boron

Barstow

Yermo (T)

Daggett (S)

Lenwood (T)

George A. F. B.

Oro Grande

Victorville

Adelanto

Apple Valley

Hesperia

Lucerne Valley (T)

Crestline

Lake Arrowhead

Big Bear

Big Bear City

Lytle Creek

Devore

Alta Loma

Etiwanda

Muscoy

Del Rosa (T)

Patton

Highland

Cucamonga

Rialto

San Bernardino

E. Highlands

Upland

Fontana

Colton

Norton A.F.B.

Montclair (T)

Bloomington

Mentone

Forest Home

Ontario

Lomo Linda (S)

Redlands

Oak Glenn (S)

Chino

Yucaipa

Bryn Mawr

Crestmore Village

Grand Terrace

Colimesa

Cherry Valley

Banning

Beaumont

Joshua Tree

Twenty-nine Palms M. B.

Twenty-nine Palms

Yucca Valley

Desert Hot Springs

Parker Dam (T)

Earp (T)

RIVERSIDE

Blythe

SOURCE: GX 16B.

296-109 O-68 (Face p. 16B)

HOME DELIVERY OVERLAP OF THE LOS ANGELES TIMES AND THE SAN BERNARDINO SUN—1964

HOME DELIVERY OF BOTH TIMES AND SUN

Adelanto
Alta Lomo
Apple Valley
Baker
Banning (Riv.)
Barstow
Beaumont (Riv.)
Big Bear [1]
Big Bear City [1]
Blythe (Riv.)
Bloomington
Boron (Kern)
Calimesa
Cherry Valley (Riv.)
China Lake (Kern)
Chino
Colton
Crestline
Crestmore Village
Cucamonga
Del Rosa
Desert Hot Springs (Riv.)
Devore
East Highlands
Etiwanda
Fontana
Forest Home
Fort Irwin
George A. F. B.
Grand Terrace
Hesperia
Highland
Joshua Tree
Lake Arrowhead [1]
Lomo Linda
Lytle Creek
Mentone
Muscoy
Needles
Norton A. F. B.
Ontario
Oro Grande
Redlands
Rialto
Ridgecrest (Kern)
San Bernardino
Trona
Twenty-nine Palms
Twenty-nine Palms M. B.
Upland
Victorville
Yucaipa
Yucca Valley

NOTE.—Cities and communities are in San Bernardino County unless otherwise indicated.

[1] Home delivery reported by the *Sun* for these communities correspond with the area reported by the *Times* as San Bernardino Mountain Resorts.

Source: Stipulation, Para. 20 and 87.

HOME DELIVERY OF THE TIMES ONLY

Argus
Earp
Lenwood
Lucerne Valley
Montclair
Parker Dam
Patton
West End
Yermo

HOME DELIVERY OF THE SUN ONLY

Bryn Mawr
Daggett
Oak Glen

U.S. GOVERNMENT PRINTING OFFICE: 1947 208-100